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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**NOUS GROUP STRATEGIC REVIEW OF THE ACT OFFICE OF THE DIRECTOR OF PUBLIC
PROSECUTIONS**

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Strategic Review

ACT Office of the Director of Public Prosecutions

9 August 2017

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1 Executive Summary

The ACT Office of the Director of Public Prosecutions (DPP) performs more prosecutorial functions than any other public prosecutions agency in Australia. It prosecutes all matters within its jurisdiction, ranging from minor traffic offences in the Magistrates Court to murders in the Supreme Court.

Changes in the ACT justice system over the last decade have created challenges for the DPP. For the DPP to meet the needs of the ACT into the future, it must work with the ACT Government and other stakeholders in the justice system to address significant challenges.

Since 1998, the volume of Supreme Court trials in the ACT has grown at over 90%, a trend of four times the ACT population, while the number of appeals has trended at over 12 times the population growth.¹

Since 2010/11, Supreme Court trials have become proportionately more complex. Technological advancements have aided police investigations and victims have gained a greater voice. Sex offence matters finalised in the Supreme Court have increased by 85% since 2010/11.² Following legislative amendments, many of the less complex assault matters which used to require a Supreme Court trial are now dealt with in the Magistrates Court.

The DPP has embraced the challenge of meeting higher community expectations on how it prosecutes sexual assaults and family violence matters. The DPP makes greater use of victim impact statements, pre-trial evidence, and pre-trial applications. The number of sexual assault and family violence matters going before the courts are increasing at rates of 81% and 37% respectively, creating further demand for resource-intensive prosecutions.³

Over the last seven years, the DPP has worked closely with the Supreme Court to reduce the backlog and wait times for criminal trials. In 2010/11, the number of trials spiked from 30 to 66.⁴ This spike continued through a 'Blitz' period, in which the Supreme Court intensively listed criminal trials. This 'Blitz' strategy created a brief period where the number of trials tapered – hovering just below 50 between 2014/15 and 2015/16. However, Supreme Court trials in 2016/17 have risen again to 61.

Prosecutors in the ACT DPP perform a wider range of functions than their counterparts in other jurisdictions and must do so efficiently to keep up with demand. Compared to other state DPP's, the ACT DPP prosecutes matters at a relatively low cost with a lean FTE to matter ratio.⁵ In particular, the DPP has a high ratio of indictable matters per prosecutor, despite the office also handling summary matters.⁶

The ACT DPP also finds it difficult to compete for senior prosecutors with some of its counterpart organisations in other jurisdictions. Crown Prosecutors in New South Wales and Victoria receive significantly larger remuneration than the most senior prosecutors in the ACT, including the Executive.⁷

Together, these pressures have pushed the capacity of senior prosecutors within the DPP to the limit. The Director spends approximately 70% of his time on case work, while his Deputy and Assistant Director spend 90% of their work prosecuting matters leaving little time for managerial responsibilities.

Up until recently, the DPP managed its workload partly due to the limited capacity of the ACT Supreme Court. With only three jury rooms and four judges, the four criminal trial listing periods each year have stretched out from the intended five weeks to as long as nine weeks. This has provided the office with the ability to spread senior prosecutors out across the longer time period.

However, the ACT Supreme Court will not have the same limited capacity over the next five years. The ACT Government has made commendable investments in reducing the backlog and waiting times for criminal trials. It has already appointed a fifth Supreme Court judge and is currently completing a new Supreme

¹ See Figure 1: ACT population vs number of criminal trials and sentencing matters in the Supreme Court (% change from base year).

² See Figure 4: Selected Supreme Court matters (% change from base year).

³ See Figure 8: Number of sex offence and family violence matters commenced (% change from base year).

⁴ See Figure 1: ACT population vs number of criminal trials and sentencing matters in the Supreme Court (% change from base year).

⁵ See Figure 14: Total matters per FTE, 2012-13 to 2015-16.

⁶ See Figure 15: Indictable matters per relevant FTE, 2012-13 to 2015-16.

⁷ See Table 2: Legal salaries by post qualification experience role

Court building which will increase the Court's capacity to hear concurrent jury trials from three to five. The ACT Chief Justice intends to bring listing periods back down to five weeks.

A boosted Supreme Court capacity will sharply increase existing pressures on the DPP. Recurrent expenditure on the ACT courts system is budgeted to rise by over four times the DPP's funding increase, and a move to bring listing periods back down to five weeks may push the DPP beyond its capacity.

In addition to this short term pressure, the DPP also faces issues in the medium to long term. According to official ACT Government projections, the ACT population will continue to grow at 6% between 2016 and 2020,⁸ roughly the same rate for the previous six year period of 2011 to 2015.⁹ If historical trends over the last 19 years continue, in 2024/25 the DPP will face 32% more trials and 74% more appeals.¹⁰ If trends over the last seven years continue,¹¹ a higher proportion of these trials will be more complex matters, with a projected rise in sex offence matters of 124%.¹² Over the same period, projected FTE for senior prosecutors will only rise by 3.5%.¹³

We make the following recommendations based on our analysis of quantitative data and consultations with staff in the ACT DPP and equivalent offices in other jurisdictions.

Recommendation 1: Provide the DPP with an immediate increase in resources, followed by greater funding over the long term to meet the increasing number and complexity of trials and appeals

The ACT DPP will need the following within the next twelve months to ensure it can keep up with the demands from an increased Supreme Court capacity:

- an increase in Grade 3, Grade 4 and Grade 5 prosecutors by at least 30% of current actual FTE
- the establishment of at least one, and ideally two new Crown Prosecutor positions with capacity to take some pressure off the current DPP Executive
- an increase in the number of supporting staff, including paralegals, to support greater trial workloads.

In addition to the above, the DPP requires an immediate injection of extra funding for specialised prosecutors to meet the increase in confiscation of criminal asset referrals from the Australian Federal Police (AFP)'s Financial Investigation team, which has more than quadrupled its membership from 2 to 9 officers.

Beyond an immediate need for more resources, the DPP will require additional funding over the long term to ensure it can meet the increasing number of, and complexity in Supreme Court trials and appeals. Even if the Courts and DPP successfully work together to address the backlog in court cases, trends for trials, appeals, family violence, and sexual assault indicate that the DPP's workload will continue to increase over time as the ACT population grows.

Recommendation 2: Future proof the ACT Justice System by resourcing it as a unified whole

The fact that court resourcing can increase by 43% in one year without a commensurate increase in prosecutor resources highlights the need for a unified resourcing strategy for the entire justice system.

The recent increase in police resources on confiscating criminal assets provides another example of the need for each relevant agency in the justice system to be resourced in a unified, strategic way.

⁸ Official population projections indicate that the ACT population will grow by 6% between 2016 and 2020: ACT Government, Media Release, 'ACT's population to reach over 421,000 by 2020', 13 March 2017, available at <http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/barr/2017/acts-population-to-reach-over-421,000-by-2020> accessed on 26 July 2017.

⁹ The population growth rate in the ACT rate between 2011 and 2015 was 6.17%: Australian Bureau of Statistics, Region Summary – ACT, available at <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3101.0Jun%202016?OpenDocument>>, accessed on 21 July 2017.

¹⁰ See Figure 18: Linear forward projections of trials, appeals, sex offence matters and FTE.

¹¹ Note: a smaller time period of seven years is used because of limited availability of data prior to 2010/11.

¹² See Figure 18: Linear forward projections of trials, appeals, sex offence matters and FTE.

¹³ See Figure 18: Linear forward projections of trials, appeals, sex offence matters and FTE.

The justice system working together as one cohesive unit has underpinned successful approaches to addressing workload pressures in other jurisdictions such as Victoria.

Recommendation 3: Provide the DPP with greater financial independence and governance

The ACT Government should directly appropriate money to the DPP so that it can align its expenditure with its priorities and work more effectively as an independent statutory authority.

This is unlikely to result in increased administrative costs to the system as shared services can still be leveraged. In fact, the DPP is likely to gain efficiencies by negotiating directly with the Office of Shared Services so that they only use and pay for what they need.

The Government should also enact legislative change to allow the DPP to appoint senior 'Crown Prosecutors' on individual contracts. Without this change, it would be difficult to recruit sufficiently senior staff with the capacity to take on matters currently handled by the Executive.

Recommendation 4: Provide the DPP with greater flexibility to send trained paralegals to appear in straightforward court procedures such as listing hearings

Simple legislative amendments could allow non-lawyers with some legal training to appear before the Magistrate's Court for some non-contentious applications. This would free up time for junior prosecutors to assist with more serious matters.

Similar procedures have existed in Queensland since 1999, when the Supreme Court permitted 'sufficiently informed' articulated clerks to appear in court for some applications and reviews.¹⁴

Recommendation 5: Develop a 'Justice Cloud' to create a more efficient and innovative justice system

A 'Justice Cloud' would create a single platform for relevant government agencies to send, receive, and update all evidence, court documents, decisions and files. Each unique user would only be able to access information which security protocols permit them to.

This would cut down on duplication, improve information flow and open up opportunities for new technologies to assist with the court system, law enforcement, and corrective services.

¹⁴ Supreme Court of Queensland, Practice Direction No 24 of 1999, 9 August 1999. See also Supreme Court of Queensland, Practice Direction No 7 of 2001, 11 September 2001.

2 Changes in the ACT justice system have put increasing pressure on the DPP

2.1 The DPP prosecutes summary matters in the Magistrates Court and indictable matters in the Supreme Court

There are two types of criminal matters dealt with by the courts:

1. **Summary offences:** Less serious criminal offences including most traffic offences, property offences (such as theft) and assaults. Summary offences are always heard in the Magistrates Court.
2. **Indictable offences:** Serious offences including homicide, serious drug matters, serious fraud, sexual assault and the more serious violent offences (such as those occasioning grievous bodily harm). Indictable offences are always committed to the Supreme Court for either sentencing (for pleas of guilty) or trial (for pleas of not guilty). Supreme Court trials are a lengthy process and generally include a jury.

A matter is determined to be 'summary' or 'indictable' during the initial listing process in the Magistrates Court. Currently, the following criteria apply:

- offences which carry a maximum prison sentence of two years or less must be dealt with as summary matters by the Magistrates Court
- for any offence which carries a maximum prison sentence of 5 years or less, the DPP may elect to have the matter dealt with as a summary matter in the Magistrates Court
- for any offence which carries a maximum prison sentence of 10 years or less,¹⁵ the accused may elect to have the matter dealt with as a summary matter in the Magistrates Court
- all other offences must be dealt with as indictable matters in the Supreme Court.

While 93% by volume of matters are finalised in the Magistrates Court,¹⁶ many of those matters are straightforward and require less attention, and from more junior officers. Indictable matters are significantly more time consuming, and require resources across the office including senior lawyers who act as trial counsel, junior lawyers who instruct, paralegals, corporate services and witness assistants. All of the DPP's senior prosecutors (Grade 4 and 5) focus solely on indictable matters, while mid-level prosecutors (Grade 3) spend a significant proportion of their time working on Supreme Court trials.

The DPP also litigates matters arising under *Confiscation of Criminal Assets Act 2003* (COCA Act). The nature of litigation under the COCA Act is quite distinct from that involved in standard criminal prosecution. Since 2009/10 the ACT DPP has completed 166 COCA Act matters, comprising 98 applications to restrain property and 68 applications to forfeit property. Together, these applications have restrained over \$20 million of assets and forfeited over \$4.6 million from criminal organisations.¹⁷

¹⁵ Note that for property offences, this number is less than 14 years rather than 10 years.

¹⁶ Data from CASES – the ACT DPP's case management system.

¹⁷ Data provided by ACT DPP, entered by prosecutors responsible for COCA Act matters. This data excludes the value of restraining orders made in 2013/14, which is not available.

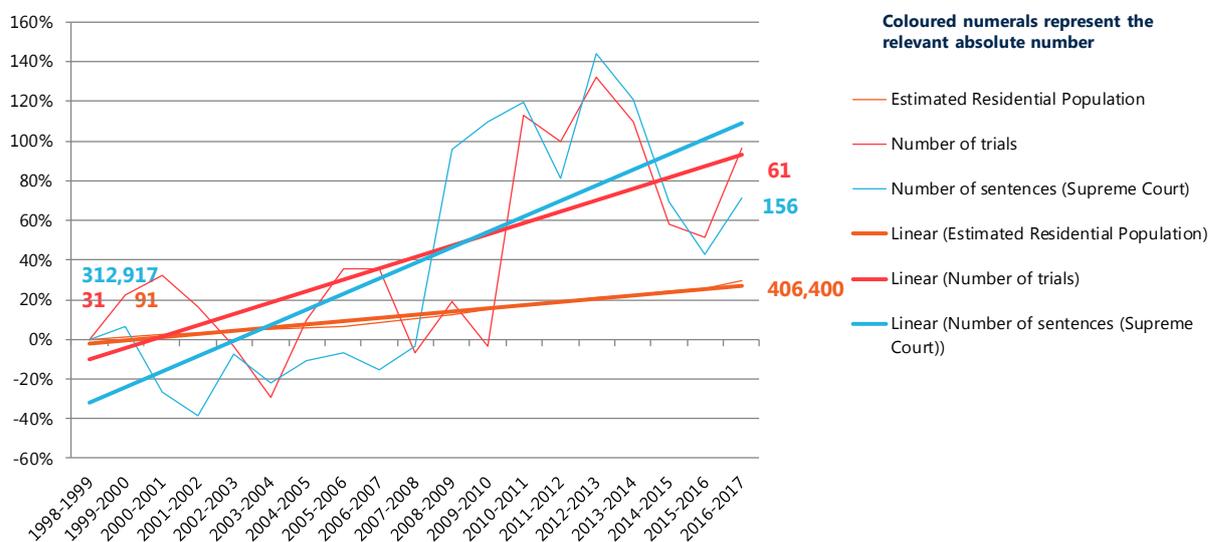
2.2 As the ACT has grown, so has the volume of Supreme Court trials the DPP must manage

The ACT population has grown steadily from an estimated 312,917 residents during 1998/1999 to nearly 400,000 during 2015/16.¹⁸ As the population has grown, so too has the volume of criminal trials in the Supreme Court, from 31 in 1998/99 to 61 in 2016/17.¹⁹

Figure 1 shows that the growth in criminal trials has outpaced population growth. Over the 18 year period recorded, criminal trials experienced an upward trend of over 90%, nearly four times the population growth trend.

This indicates the crime profile of the ACT has changed over time – increases in population have been associated with proportionately larger increases in serious criminal matters going before the courts.

Figure 1: ACT population vs number of criminal trials and sentencing matters in the Supreme Court (% change from base year)



Sources: Australian Bureau of Statistics, Region Summary – ACT; ACT DPP, Annual Report data.

Note: From 2010/11 data on the number of sentences was calculated to include the small number of resentencing matters which occur when a defendant breaches sentencing conditions. Data prior to this year does not include resentencing.

In 2010/11, the number of Supreme Court trials jumped from 30 to 66. The following year, the government provided the courts and the DPP with a short term increase in resources to implement a 'Blitz' strategy in which the Supreme Court intensively scheduled trials during central criminal listing.²⁰

The 2010/11 spike sustained itself through to 2013/14, with a peak of 72 trials in 2012/13. Since the end of the Blitz period, the number of trials briefly stabilised at just below 50 before jumping back up to 61 in 2016/17.

The number of sentencing matters going through the Supreme Court follows a similar trend to Supreme Court trials. Sentencing for complex indictable matters can be time consuming – prosecutors often have to attend an additional sentencing hearing, file a victim impact statement and make submissions.

¹⁸ Australian Bureau of Statistics, Region Summary – ACT, available at

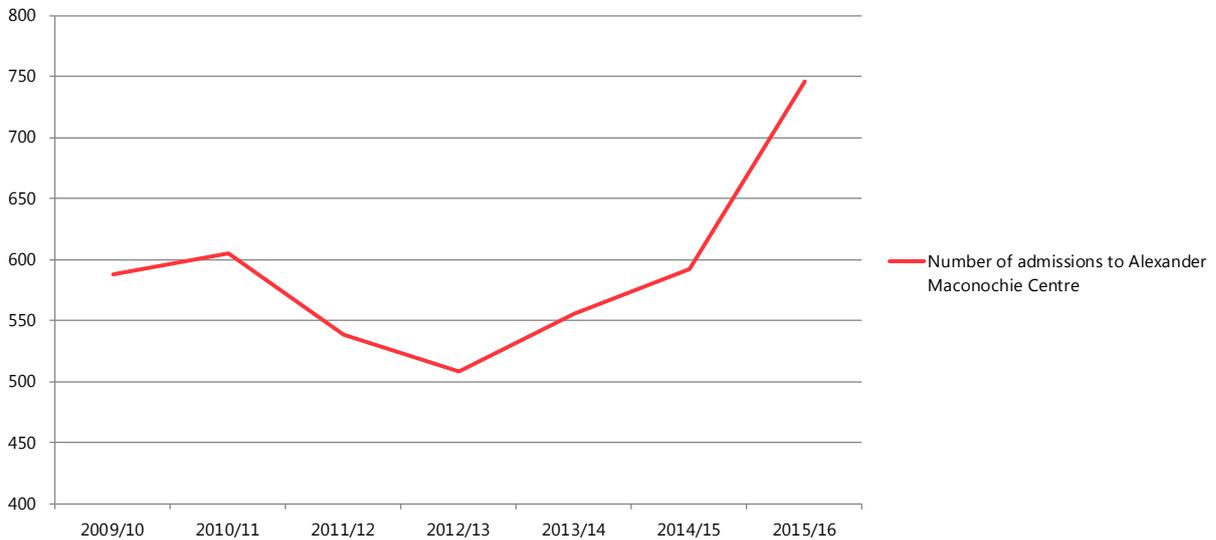
<<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3101.0Jun%202016?OpenDocument>>, accessed on 21 July 2017.

¹⁹ ACT Director of Public Prosecutions, Annual Reports 1998/99 to 2015/16. 2016/17 data provided from internal DPP records.

²⁰ ACT Director of Public Prosecutions, 2011/12 Annual Report, 'The Blitz', pg 11.

The growth rate in prison admissions reflects the significant period of change experienced by the courts and the DPP. Figure 2 shows a growth trend of nearly 10% in admissions to the Alexander Maconochie Centre (AMC) between 2009/10 and 2015/16.²¹

Figure 2: Admissions to the Alexander Maconochie Centre



Source: ACT Justice and Community Safety Directorate, Criminal Justice Statistical Profiles

Data on the volume of all matters finalised is only available since 2010/11, when the ACT DPP introduced its first electronic case management system (CASES). Figure 3 shows that since then, the numbers of indictable and summary matters finalised have been relatively steady.

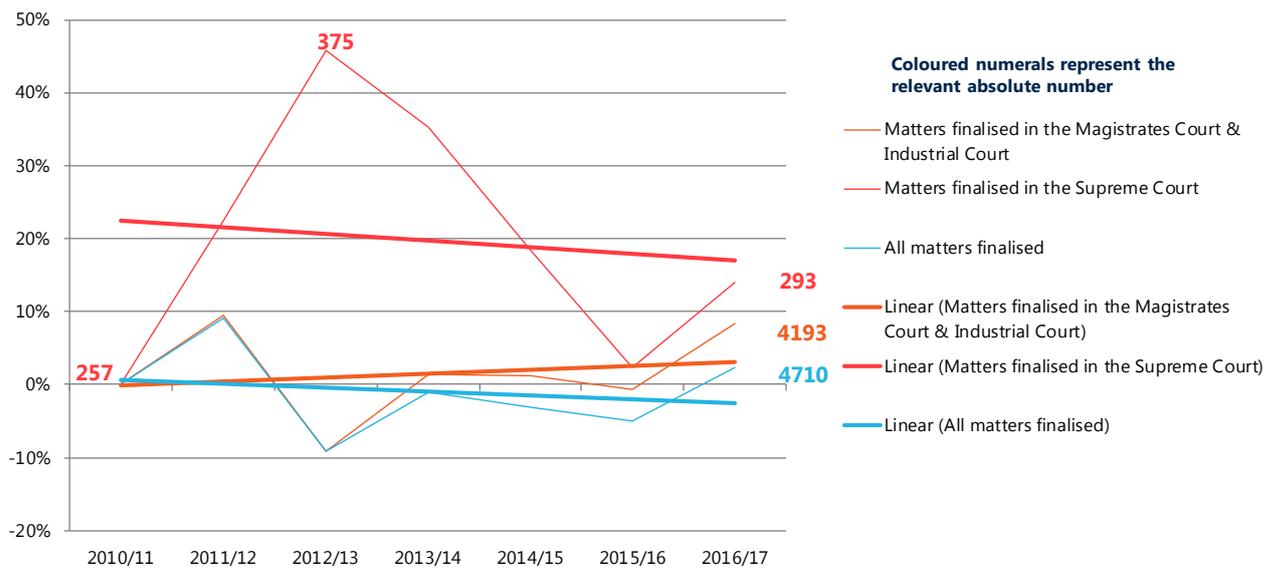
This data does not undermine Figure 1 and Figure 2 because of the following context:

- the trend for indictable matters follows the trend in Figure 1 for 2010/11 to 2016/17, but uses a base year immediately after the 220% increase in Supreme Court trials from 2009/10 to 2010/11
- since 2011, the DPP has been able to use an 'election' power to have some less serious matters heard in the Magistrates Court instead of the Supreme Court. This is explained in Section 2.3.1.
- within the Magistrates Court, the number of simple matters like traffic offences has declined significantly,²² while less simple matters have likely increased because of the 'election' power.

²¹ ACT Justice and Community Safety Directorate, JACS Criminal Justice Statistical Profiles, available at < http://www.justice.act.gov.au/criminal_and_civil_justice/criminal_justice_statistical_profiles >, accessed on 20 May 2017.

²² CASES data for the available period of 2012/13 to 2015/16 shows a decrease of 14.5% in traffic matters dealt with by the DPP.

Figure 3: Volume of matters finalised by jurisdiction (% change from base year)



Source: ACT DPP Case Management System (CASES)

2.3 Increasing complexity of indictable matters compounds the pressure from increased trial volumes

2.3.1 An increasing proportion of indictable matters are complex cases

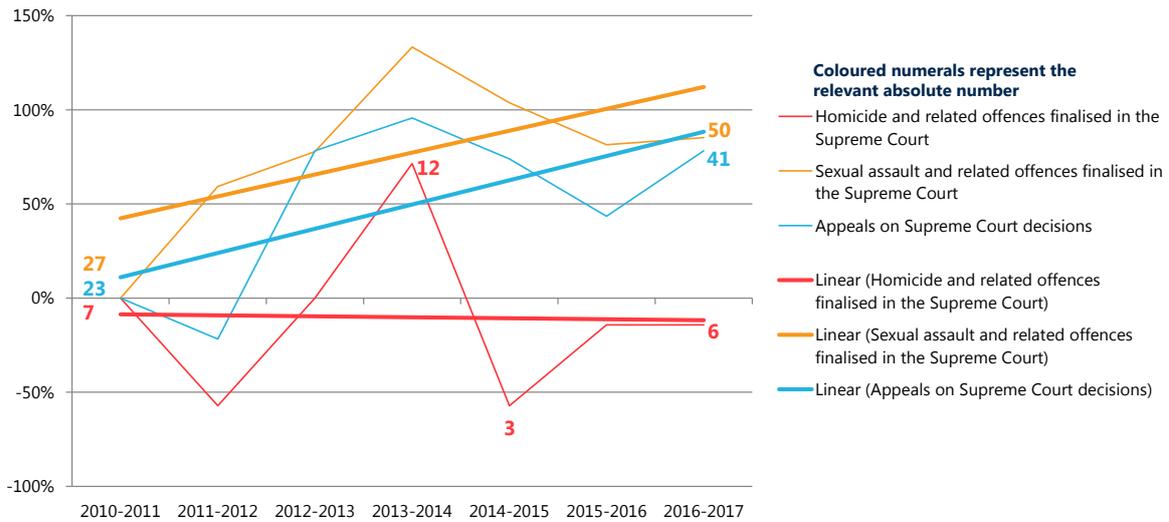
Figure 4 shows that, despite an extraordinarily high base year in 2010/11, there is still an increasing trend in the number of sexual assaults and complex appeals going through the Supreme Court and Court of Appeal. Figure 4 also shows that the numbers of homicide matters spread over a seven year period has stayed roughly in line with the 2010/11 spike.

Sexual assault matters are invariably complex for a range of reasons, including the need for specialist pre-trial evidence and tendency applications, the evidentiary issues involved in historical sex offence matters, and the complexity of legal questions around consent. These issues are discussed further in Sections 2.3.2 and 2.4.

The increasing trend in the number of appeals from Supreme Court decisions indicates an increasing complexity in Supreme Court trials. It also represents a higher workload for the executive – at present the Director and Deputy Director handle most Court of Appeal matters.

The percentage change in homicide and related offences finalised in the Supreme Court is highly volatile because of a small sample size of between 3 and 12. It is difficult to draw a clear trend from this data to determine whether homicide matters are likely to rise or fall over the next five years. However, volatility itself creates additional pressure on the DPP. Homicide matters finalised in the Supreme Court can vary from a sentencing hearing to a two month-long trial with several years-worth of preparation.

Figure 4: Selected Supreme Court matters (% change from base year)



Source: ACT DPP Case Management System (CASES)

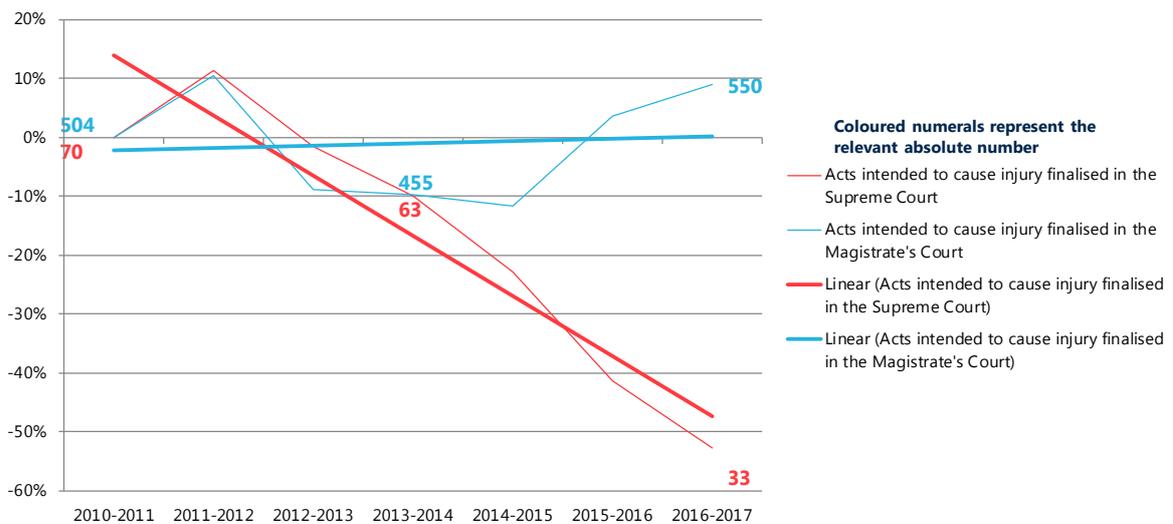
Figure 5 shows that the number of ‘acts intended to cause injury’ finalised in the Supreme Court has fallen since 2010/11. This is attributable to law reforms in 2011 which enabled the DPP to elect to have many of these matters heard in the Magistrate’s Court.

The Director Jon White SC said in his 2010/11 Annual Report that:

“It is expected that this will fairly significantly reduce the numbers of straightforward matters being committed for trial, thereby ensuring speedier hearings for those matters and freeing up Supreme Court lists”

Figure 5 also shows that the most significant drop in numbers finalised in the Supreme Court was accompanied with an increase in numbers finalised in the Magistrates Court. In the four year period from 2013/14 to 2016/17, the number of acts intended to cause injury matters finalised fell by 30 in the Supreme Court and increased by 95 in the Magistrate’s Court.

Figure 5: ‘Acts intended to cause injury’ matters finalised: Supreme Court vs Magistrates Court (% change on base year)



Source: ACT DPP Case Management System (CASES)

Figure 1, Figure 4 and Figure 5 present a problematic forecast for the DPP’s workload over the next five years. If current trends continue:

- the number of Supreme Court trials will increase (see Figure 1)
- of those trials, a greater proportion will be complex indictable matters and a lower proportion will be less complex indictable matters.

2.3.2 Criminal trials are becoming more complex and time consuming

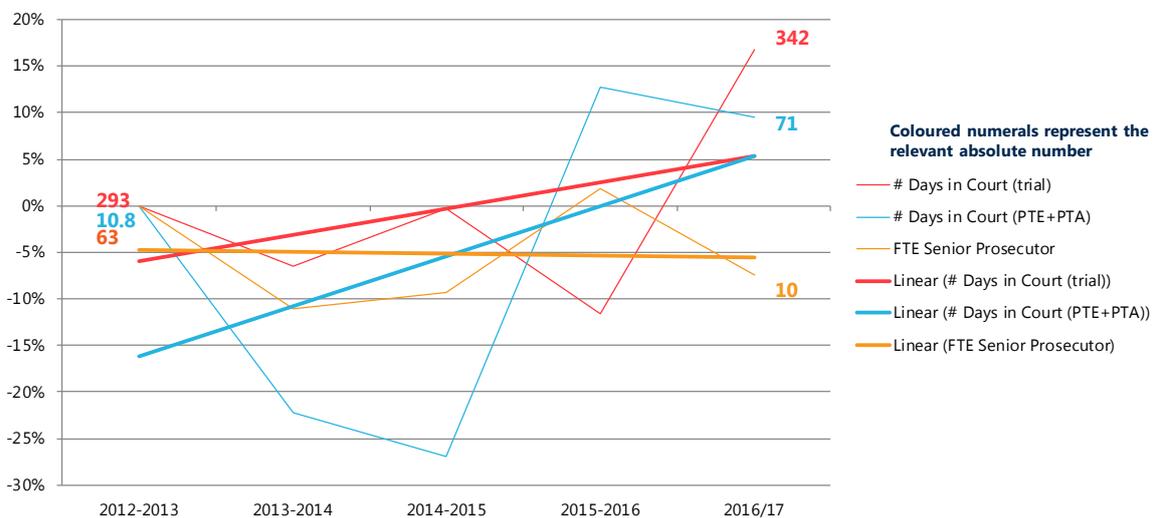
Across all jurisdictions in Australia, criminal trials are becoming more complex and time consuming.

Interviews Nous conducted with other jurisdictions indicate advances in technology are driving up the amount of evidence police provide to DPP offices. In recent times, evidence may have included hard copies of photos, video recordings, and other paper-based evidence. While technological developments have reduced the amount of physical evidence, they have also allowed police to collect more evidence, particularly in the form of electronic recordings such as CCTV, from mobile phones, and other cameras. This can result in DPP officers navigating vast amounts of electronic evidence to determine what they can use in court.

Staff from DPPs in other jurisdictions reported the recent focus on domestic and family violence and royal commissions into historic sex offences has also led to an increased number of complex matters. Domestic and family violence offences often involve vulnerable witnesses and require specialist attention from prosecutors. Historic sex offences are particularly complex as the evidence is largely witness accounts of offences allegedly committed many years ago.

Data provided by the ACT DPP indicates that they are also experiencing criminal trials becoming more complex and time consuming. Figure 6 shows an upward trend in the amount of time prosecutors spend in court on criminal trials.

Figure 6: Time spent by prosecutors in court (% change from base year)



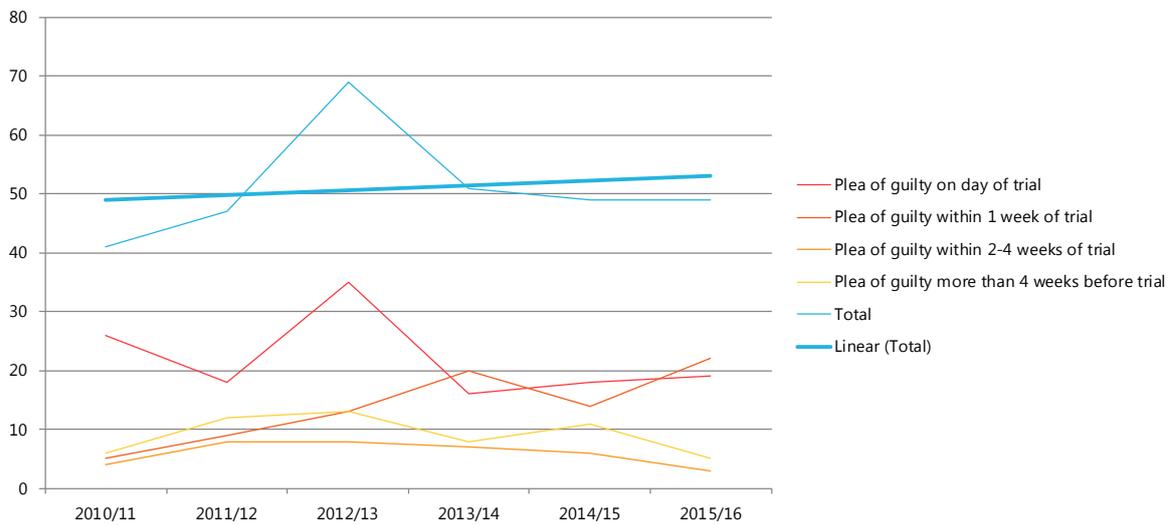
Source: ACT DPP Case Management System (CASES) combined with estimates by ACT DPP staff

A significant contributor to increasing workload is the proportion of late guilty pleas, which result in the DPP completing unnecessary preparatory work. Data on the number of trials or days in court provides an accurate picture of increasing complexity, but does not capture the work done preparing for a trial which does not proceed due to a late guilty plea.

Figure 7 indicates that defendants are increasingly entering guilty pleas after a matter has been listed for trial. By the listing stage, the DPP has already filed its committal documents, including a case summary which details the DPP’s case strategy and all evidence they seek to rely on.

Figure 7 also indicates that a significant proportion of guilty pleas are either on the day of, or within one week of the trial. By this stage, most of the work for the trial has been completed.

Figure 7: Number of guilty pleas after matter listed for trial



Source: ACT DPP Case Management System (CASES)

New South Wales has recently proposed reforms to encourage more early guilty pleas and allow the DPP to focus on the more complex matters that are likely to proceed to trial. The reforms included statutory sentencing discounts for guilty pleas, early disclosure of evidence from police, and involving senior prosecutors earlier in the process to ensure police charge individuals with the right offences.²³ These reforms were accompanied by an injection of \$27 million in extra funding for the DPP and other relevant agencies to facilitate early pleas.²⁴ The Queensland DPP reported that the Queensland government is considering similar reforms.

2.4 Changing community expectations and law reform have increased pressure on the DPP’s capacity

2.4.1 The DPP is doing more to accommodate the needs of witnesses

The ACT Government, the DPP and the ACT Supreme Court have responded to community demands for the justice system to be more accommodating to the needs of witnesses with special vulnerabilities, including children, people with mental impairment, victims of sex offences, and victims of domestic violence.

Prosecuting sensitive matters requires a special approach. The ACT DPP has a specialised team for prosecuting family violence matters and a sexual assault unit with specialised prosecutors.²⁵ The DPP also

²³ NSW Department of Justice, *Early guilty pleas reform*, 2017 available at: <<http://www.justice.nsw.gov.au/Pages/Reforms/early-guilty-pleas.aspx>> accessed June 2017.

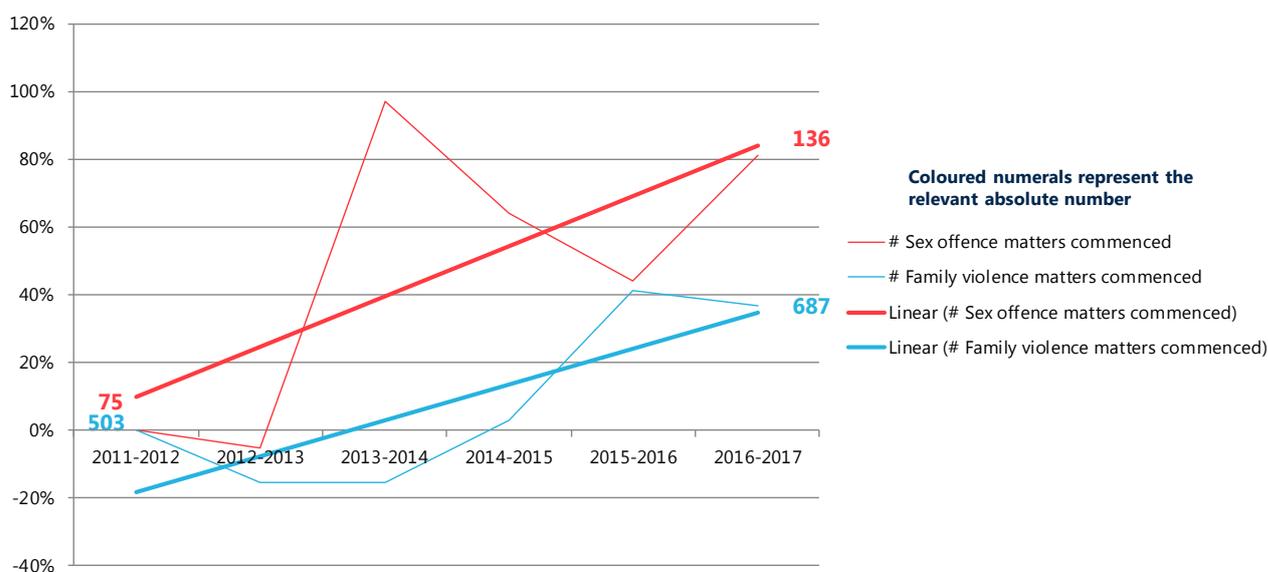
²⁴ NSW Budget 2017/17 Budget Paper No 3, Justice Cluster, available at <<https://www.budget.nsw.gov.au/sites/default/files/budget-2017-06/7.%20Justice%20Cluster.pdf>> accessed on 31 July 2017.

²⁵ ACT Director of Public Prosecutions, 2015/16 Annual Report, Directors Overview, pg. 14 – 16.

draws extensively on its Witness Assistance Service and the expertise of senior prosecutors with experience in family violence or sexual assault.²⁶

Figure 8 shows that sexual assault matters and family violence matters are increasing at alarming rates. This reflects the comments made by DPPs in other jurisdictions, who reported the recent focus on domestic and family violence, and royal commissions and inquiries into historic sex offences has led to an increased number of complex matters requiring specialist attention.

Figure 8: Number of sex offence and family violence matters commenced (% change from base year)



Source: ACT DPP Case Management System (CASES)

In 2008 and again in 2016, the ACT reformed its evidence procedures through the *Sexual and Violent Offences Legislation Amendment Bill 2008* and the *Family Violence Act 2016*. New procedures included:

- special pre-trial evidence procedures for child witnesses of sexual offences or adults with mental impairment
- new pre-trial applications by which the DPP can seek to use pre-recorded interviews with police during trial from victims or witnesses of sexual or violent offences.

Over the past five years the DPP has significantly increased its use of pre-trial applications to lead tendency evidence instituted by the DPP in the Supreme Court.²⁷ These most commonly occur in relation to sexual offences against children.

The DPP continues to support these procedures.²⁸ However, the procedures have created new demands on prosecutors. Pre-trial evidence requires prosecutors to prepare for and attend a hearing with special rules of evidence and procedure. Pre-trial applications require prosecutors to make an application to the court and prepare written submissions.

In response to greater community expectations around sentencing, the DPP has also worked to increase its use of victim impact statements in reports. The Witness Assistance Service within the DPP has been a critical resource in supporting this process. In the 2016 Annual Report, the ACT Director of Public Prosecutions said:

²⁶ ACT Director of Public Prosecutions, 2015/16 Annual Report, Directors Overview, pg. 14.

²⁷ Interviews conducted with the ACT DPP Executive and staff.

²⁸ ACT Director of Public Prosecutions, 2015/16 Annual Report, Directors Overview, pg. 14 – 16.

"Victims were once bystanders in a criminal process which concentrated exclusively on the accused. Now victims are finding their voice, and prosecutors have a vital role to play in that... It is clear that more must be done to involve victims – to explain the various stages of the court process, to seek their views on prosecutorial decisions, and to ensure that their victim impact statements are put before sentencing courts."

2.4.2 Additional funding for the AFP to investigate organised crime will create a bottleneck for the DPP's confiscation of criminal assets work

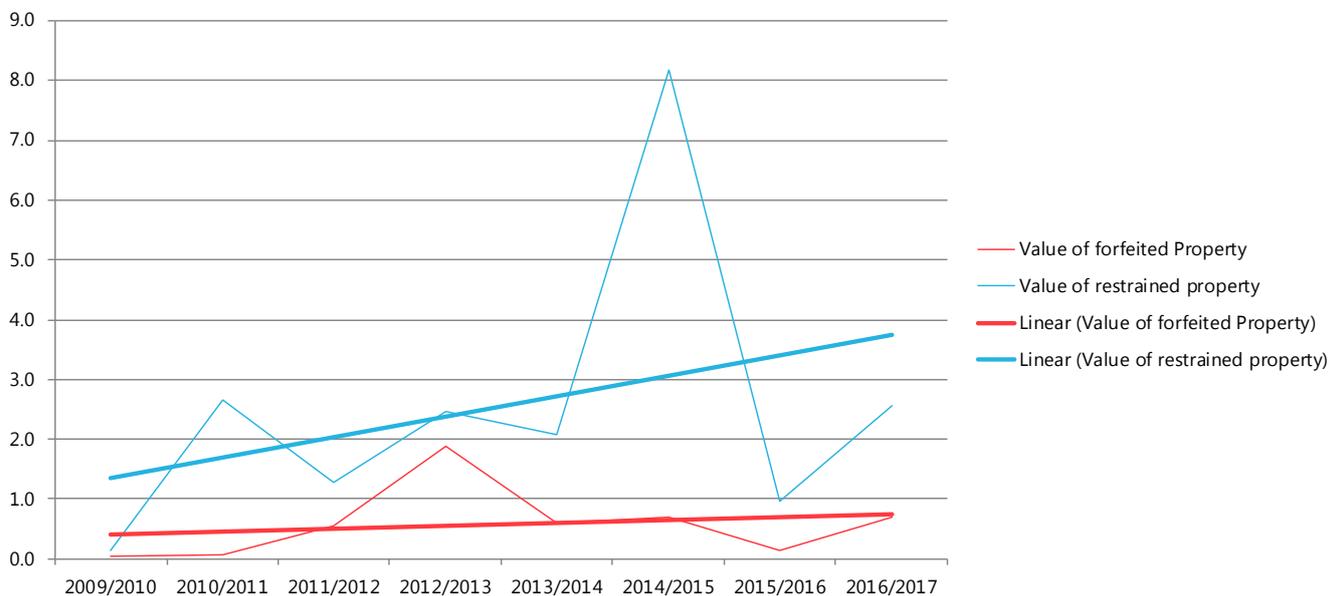
The ACT Government recently increased resources to the AFP for confiscation of criminal assets work under the COCA Act. The Financial Investigation Team, previously known as the AFP Confiscation of Criminal Assets unit, recently increased from 2 members to 9. The ACT Government funded these extra positions to disrupt organised crime, with a particular focus on outlaw motor cycle gangs.

Prosecutors at the DPP who specialise in COCA Act litigation work closely and collaboratively with detectives in the Financial Investigation Team. Those detectives undertake a preliminary investigation and assist in preparing the detailed affidavits required.

This increase in the Financial Investigation team from 2 to 9 members will have a corresponding effect on increased referrals to the DPP for proceedings under the COCA Act. However, without a commensurate increase in prosecutorial resources, additional referrals will create a bottleneck for prosecutors specialising in COCA litigation. This is likely to result in significant delays in matters being progressed.

Figure 9 indicates that the DPP has enjoyed increasing success at restraining or forfeiting the assets of criminal organisations. If the DPP lacks capacity to keep up with COCA Act referrals, it may actually cost the ACT Government money through missed or delayed opportunities to confiscate proceeds of crime.

Figure 9: Value of property restrained or forfeited under the COCA Act (\$m)



Source: ACT DPP Case Management System (CASES) combined with records held by ACT DPP staff

3 The DPP has performed well to meet pressures placed on it by the system

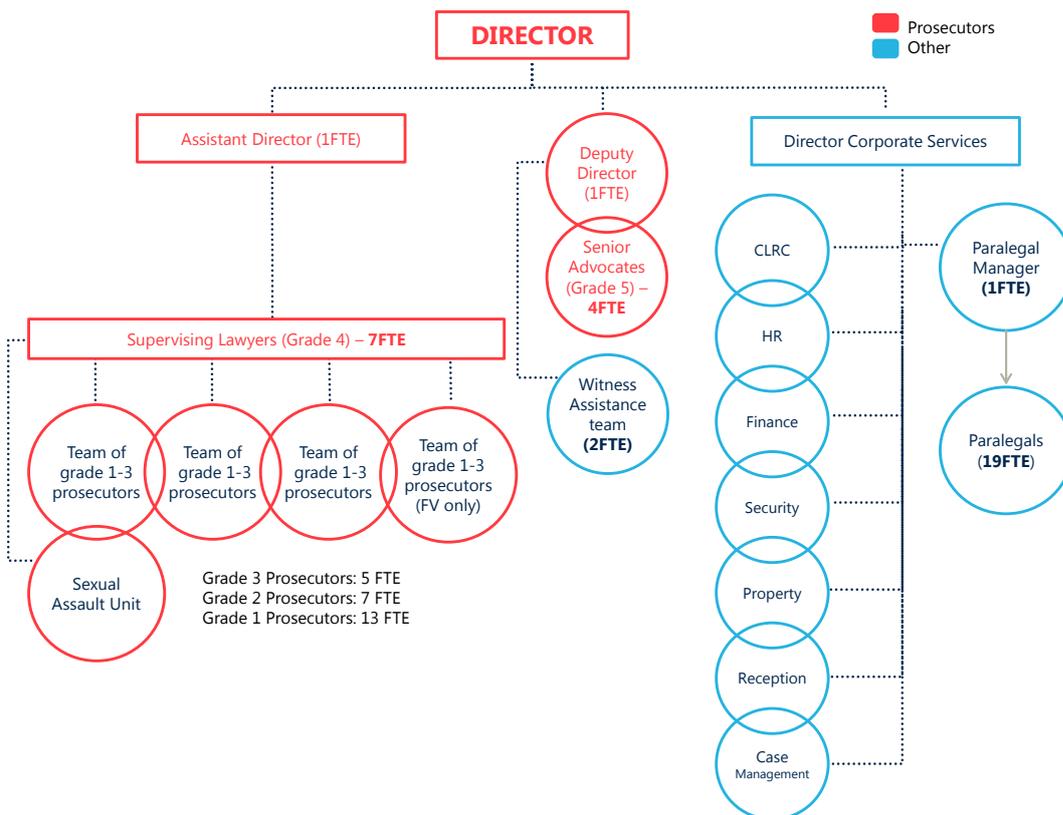
3.1 ACT DPP lawyers perform a broader range of work than lawyers in other DPPs

3.1.1 Under the ACT model all summary and indictable matters are handled by prosecutors

The ACT DPP prosecutes all indictable and summary matters within its jurisdiction. Figure 10 depicts the ACT DPP staff structure. The Executive, senior advocates, supervising lawyers and Grade 3 prosecutors prosecute indictable matters; while grade 1 and 2 lawyers prosecute summary matters and assist in the prosecution of indictable matters.

The Executive consists of the Director, Deputy Director, and Assistant Director. The Executive prosecutes virtually all murder trials and appears in all Court of Appeal hearings.

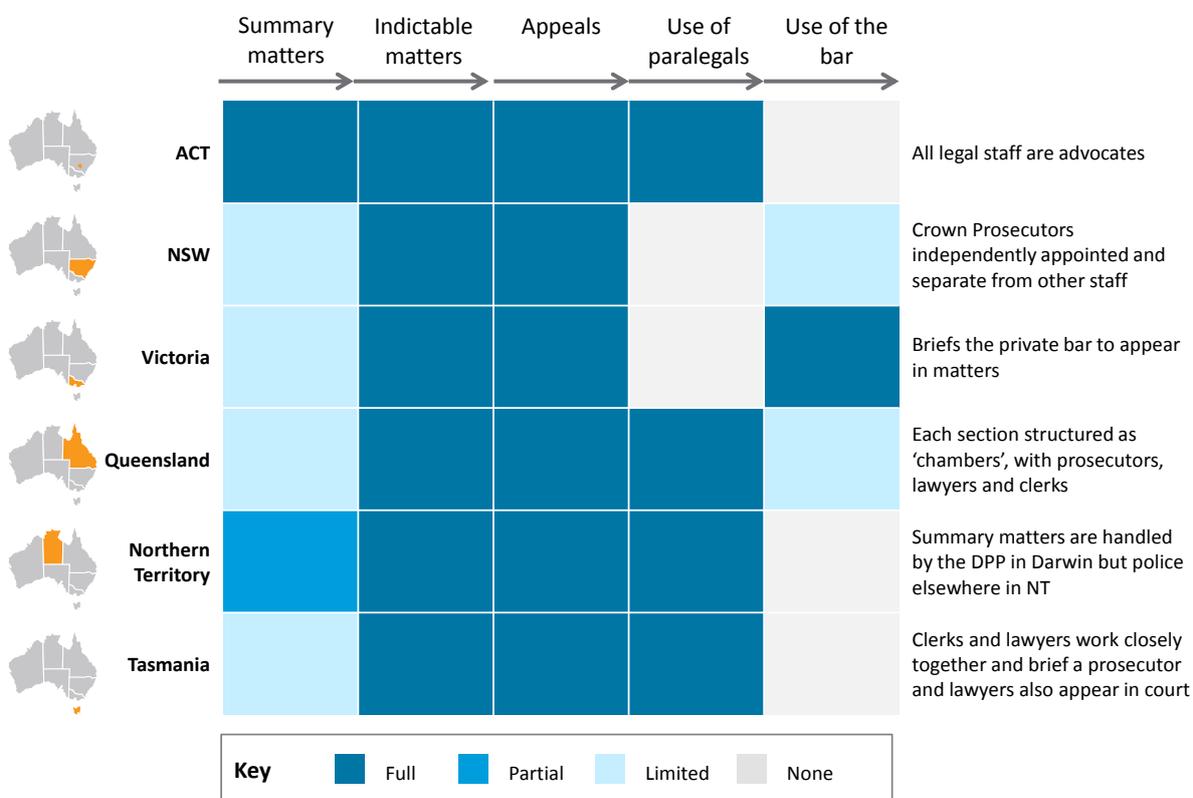
Figure 10: ACT DPP staff structure



3.1.2 Most other jurisdictions perform fewer functions overall than the ACT

There is no single model of functions that consistently applies across all DPPs in the jurisdictions considered in this review, as demonstrated in Figure 11.

Figure 11: Jurisdictional DPP functional map²⁹



The ACT DPP performs more functions than other DPPs. It stands alone in the jurisdictions spoken to as part of the review, as the DPP responsible for all summary matters and indictable matters. The Northern Territory DPP is the only other DPP with a significant role in summary matters. Even then, it has not fully taken responsibility for summary matters, with police prosecutors still taking carriage of those matters outside of Darwin.

The ACT DPP uses para-professional paralegals to support its summary practice. Paralegal staff employed by the ACT DPP must have completed or be studying for qualification in Legal Studies and Business Administration, or be currently undertaking a law degree.

The DPPs in the large jurisdictions of New South Wales, Victoria, and Queensland all focus heavily on indictable matters, an approach that Tasmania has also adopted. These DPPs undertake minimal summary matters. They only become involved in limited cases – usually where there is a conflict of interest for police or high levels of complexity. This is primarily due to the numbers of complex indictable matters handled by these offices, according to our interviews with other DPPs.

There are slight differences in how different DPPs undertake these functions. For example, Queensland relies more heavily on legal clerks, who are an integral part of their business model. New South Wales and Victoria do not use legal clerks at all and rely solely on administrative staff to support legal staff. Victoria also relies heavily on the private bar, a resource external to the DPP.

²⁹ Source: Interviews conducted by Nous with DPP offices in each jurisdictions

3.1.3 Prosecutors in the ACT perform a wider range of individual tasks than their counterparts in the larger jurisdictions

Jurisdictional differences in legal profession terminology and application lead to staff of DPP offices undertaking different tasks. The Australian legal profession is divided into solicitors and barristers. This distinction is reflected in many DPP offices, including New South Wales, Victoria, Queensland, and Tasmania. In the ACT, lawyers are admitted as solicitors and barristers. All ACT DPP legal staff are subsequently 'prosecutors' and appear in court.³⁰ The Northern Territory has adopted a similar model.

Table 1 shows the breakdown of tasks performed by legal staff across jurisdictional DPP offices.

Table 1: Tasks performed by legal staff across DPP offices

Jurisdiction	Solicitor role	Crown Prosecutor role
New South Wales	Finalise simple matters, non-trial appearances Prepare complex files for Crown Prosecutors	Appear in court on complex matters, including trials Sign indictments
Victoria	Finalise simple matters, non-trial appearances Prepare complex files for Crown Prosecutors	Appear in court on complex matters, including trials Sign indictments
Queensland	Finalise simple matters, non-trial appearances Prepare complex files for Crown Prosecutors	Appear in court on complex matters, including complex sentences, all trials and appeals Sign indictments
Tasmania	Handles all types of matters, including attending listings, summary matters, trials and appeals (focus on simple matters)	Handles all types of matters, including attending listings, summary matters, trials (of all matter types) and appeals (focus on more complex matters)
ACT/NT	N/A	Handles all types of matters, including attending listings, summary matters, trials (of all matter types) and appeals

The larger jurisdictions all follow a similar model of splitting the role of solicitors and Crown Prosecutors essentially between trial and non-trial work respectively. The smaller jurisdictions have much more fluidity in roles. This includes Tasmania, which despite making a distinction between solicitors and prosecutors in job titles, does not distinguish between them in the terms of work performed beyond complexity. This may be a function of fewer matters meaning a more simple structure is more effective.

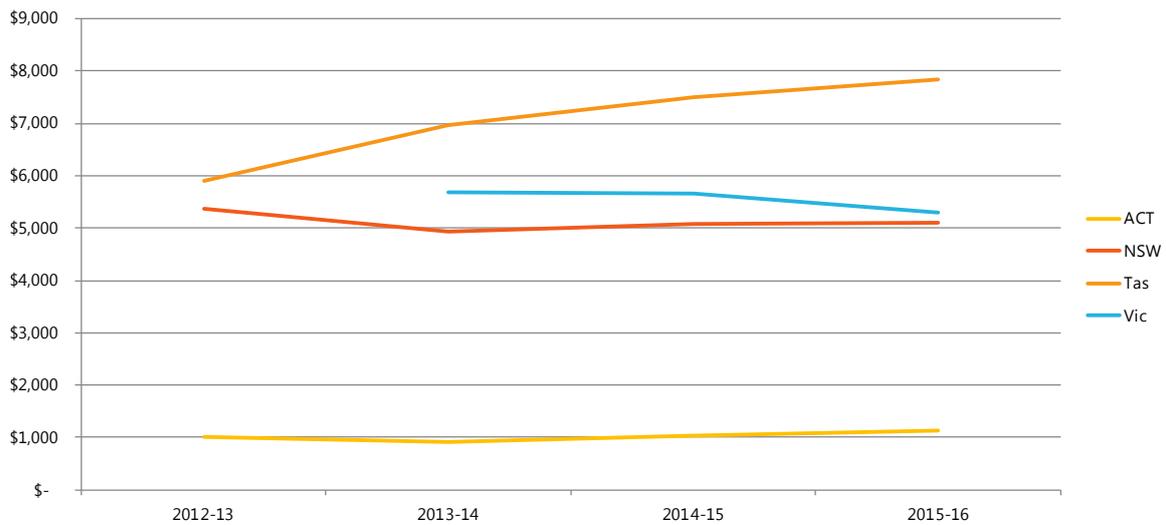
This suggests ACT DPP legal staff undertake a broader range of tasks than their counterparts in the larger jurisdictions. An ACT prosecutor will handle an indictable matter from committal all the way through to trial and sentencing. In the larger jurisdictions, solicitors will transfer an indictable matter to a prosecutor at a point just before trial. ACT prosecutors handle all sentences and appeal hearings, while in the larger jurisdictions solicitors will be responsible for simple sentences and appeals.

3.2 The ACT DPP performs these functions more cost effectively than some other DPP offices

The ACT DPP is relatively efficient when compared with DPP offices in other jurisdictions. The ACT appears to be more cost effective than New South Wales, Victoria, and Tasmania, based on the measure of the average salary cost of each matter handled, as shown in Figure 12

³⁰ Some staff are known as supervising lawyers, but they perform a team leader and advocacy role rather than a solicitor type role.

Figure 12: Total salary cost per matter, 2012-13 to 2015-16



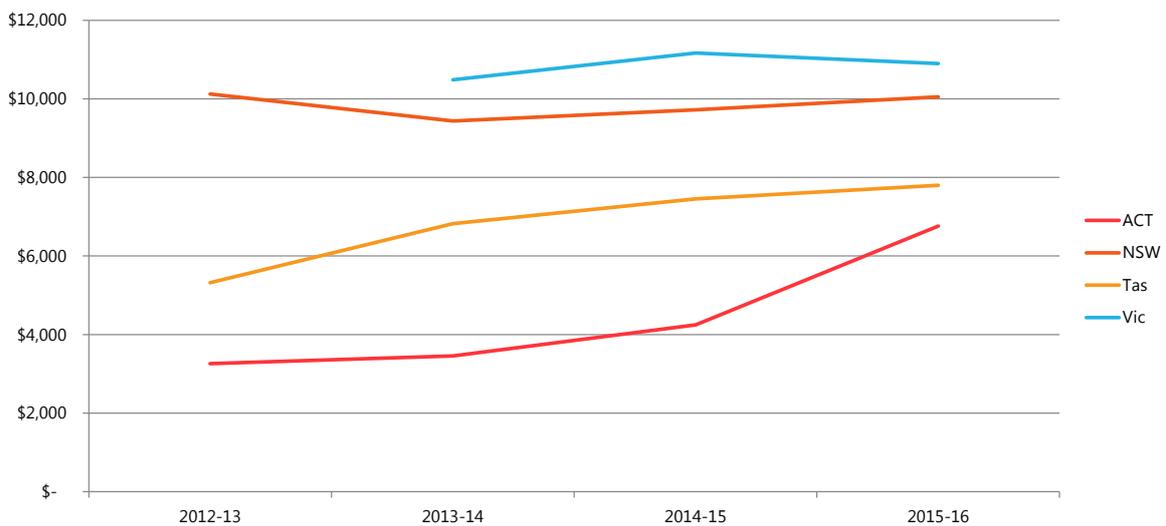
Source: Data provided by jurisdiction's DPP offices; NSW Public Service Commission

Notes: NSW salary data calculated from publicly available material. Highest bands have been assumed for non-prosecution staff and average prosecution cost estimated using publicly available data; Victoria data not available for 2012-13; salary costs do not include superannuation, which can vary significantly across jurisdictions, or other employee on-costs.

The ACT and New South Wales's cost effectiveness has remained consistent over the last four financial years. Tasmania's total salary cost per matter has risen sharply over the same period. Victoria's has dropped slightly over the last three financial years. New South Wales and Victoria appear to have similar cost effectiveness ratios on this measure, perhaps a reflection of the similar jurisdictional sizes. However, both offices have different business models and deal with different numbers of matters.

The ACT also handles indictable matters efficiently, despite undertaking more summary matters than other jurisdictions. This is shown in Figure 13.

Figure 13: Relevant legal salary costs for indictable matters, 2012-13 to 2015-16



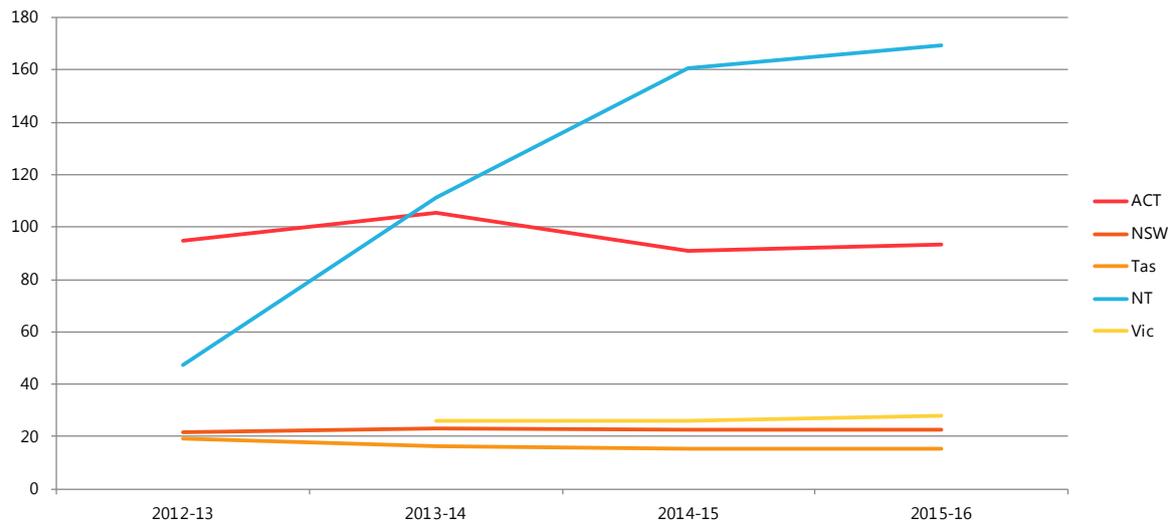
Source: Data provided by jurisdiction's DPP offices; NSW Public Service Commission

Notes: Relevant legal salary costs refers to salaries of staff responsible for indictable matters. In the ACT, this includes Grade 4 and 5 prosecutors and half of Grade 3 prosecutors (Grade 3s spend half of their time on indictable matters). NSW salary data calculated from publicly available material. Highest bands have been assumed for non-prosecution staff and average prosecution cost estimated using publicly available data; Victoria data not available for 2012-13. Includes relevant legal staff responsible for indictable matters – does not include executive staff or ACT staff who may instruct on trials or play other support roles. Salary costs does not include superannuation or other employee on-costs.

It appears the cost is rising for all jurisdictions in handling indictable matters. However, this rise appears most significant for ACT, noting it is only across one financial year. Over the last four financial years, New South Wales and Victoria's salary costs by indictable matters have risen and fallen, and have returned to around the same rate. The ACT and Tasmania's salary costs per indictable matter have climbed significantly in the same period.

ACT DPP legal staff also handles more matters in a year, on average, than their counterparts in New South Wales and Tasmania. However they do not handle as many as their colleagues in the Northern Territory, as shown in Figure 14.

Figure 14: Total matters per FTE, 2012-13 to 2015-16



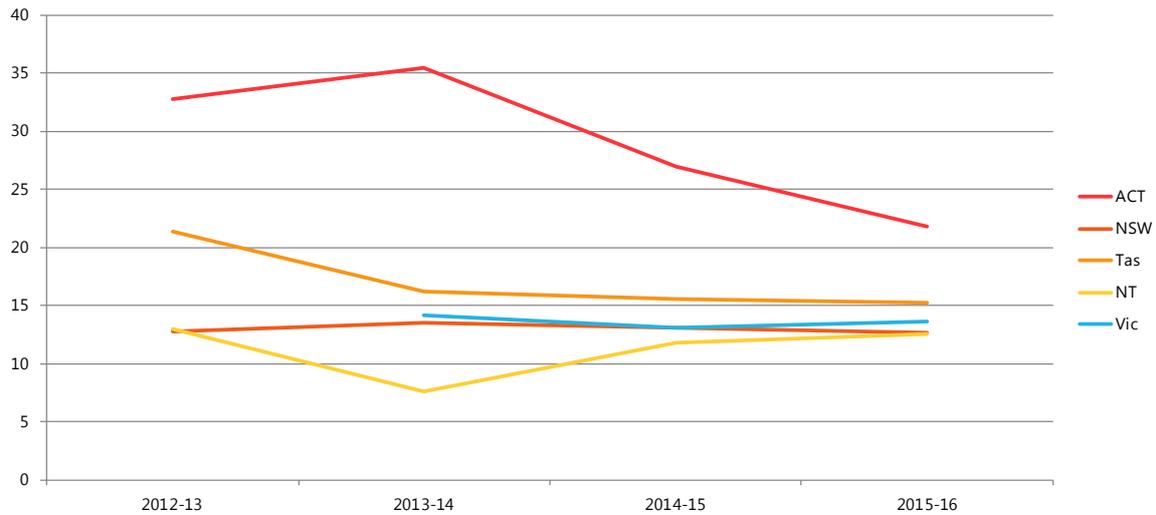
Source: Data provided by jurisdiction's DPP offices; NSW Public Service Commission

Notes: Victoria data for 2012-13 not available; calculated by dividing total matters (summary and indictable) by the number of FTE (prosecutors, solicitors, executive and paralegal/admin staff where data provided) for each year

The work of the ACT and the Northern Territory DPP offices includes a large proportion of summary matters (the spike in Figure 14 for the Northern Territory reflects the Darwin office assuming responsibility for summary matters). The Northern Territory has dealt with more summary matters than the ACT DPP over the last few years with a smaller population (an average of 6,000 summary matters a year for a population of 140,000 in Darwin compared with ACT's average of around 4,000 and a population of just under 400,000). The ACT and Northern Territory DPPs also have similar FTE numbers, despite these differences. New South Wales, Victoria, and Tasmania handle minimal summary matters (New South Wales averaged just over 400 summary matters over the last few years and Tasmania averaged just under 100).

ACT also handles a considerable number of indictable matters per relevant FTE (those FTE responsible for indictable matters), as shown in Figure 15.

Figure 15: Indictable matters per relevant FTE, 2012-13 to 2015-16



Source: Data provided by jurisdiction's DPP offices; NSW Public Service Commission

Notes: Relevant FTE refers to staff responsible for indictable matters. In the ACT, this includes Grade 4 and 5 prosecutors and half of Grade 3s. NSW salary data calculated from publicly available material. Highest bands have been assumed for non-prosecution staff and average prosecution cost estimated using publicly available data; Victoria data not available for 2012-13. Includes relevant legal staff responsible for indictable matters – does not include executive staff or ACT staff who may instruct on trials or play other support roles. Salary costs does not include superannuation or other employee on-costs.

The number of indictable matters per relevant FTE is higher in the ACT than other jurisdictions. The decline since 2013/14 reflects the end of the Blitz period discussed in section 2.2. It may also reflect the DPP's new power to have some offences heard as summary matters, as discussed in section 2.3.1.

The ratios for the other jurisdictions have largely remained consistent, with only slight variations.

Figure 15 should not be interpreted as a benchmark – there are variations between jurisdictions which make it impossible to perfectly compare FTE devoted to indictable matters:

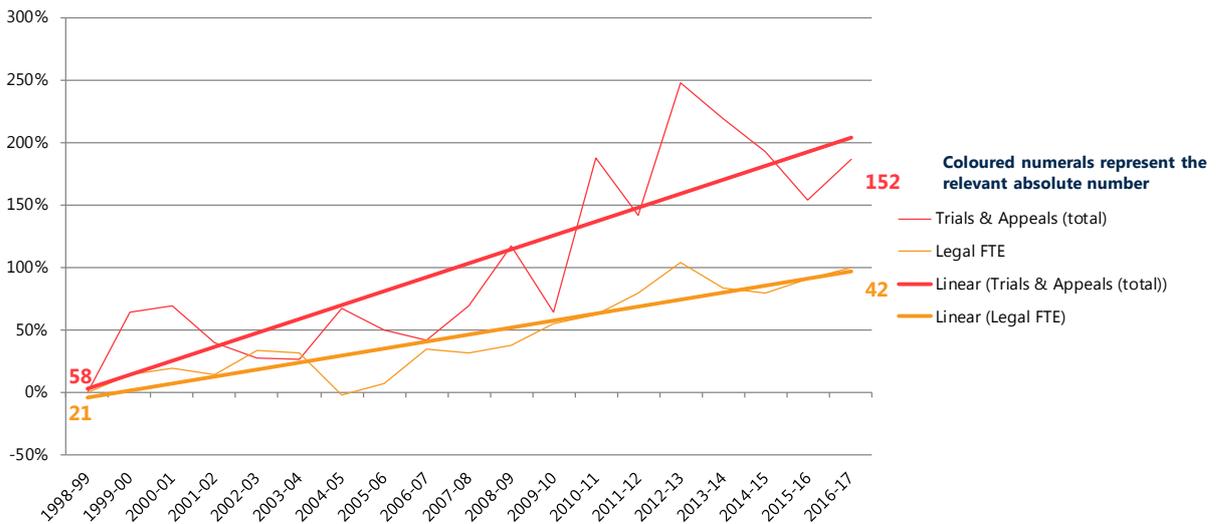
- The scope of 'indictable' varies across jurisdictions – not all indictable matters are the same. Some indictable matters are far more complex and time consuming than others. As such, this is only an indicative measure of cost effectiveness and should be used with caution.
- Legal staff are used in different ways across DPP offices. Generally speaking, more senior legal staff handle more complex legal matters. ACT senior legal staff handle trials and other complex matters, and junior legal staff handle summary matters and instruct on trials. In Queensland, junior legal staff are responsible for summary matters as well as indictable matters and legal clerks are used for administrative court appearances, such as the listings processes.

3.3 The ACT DPP delivers these functions without an increase in resources that matches its operating environment

3.3.1 The DPP does not have enough senior prosecutors to keep up with the trends of increasing workload on complex criminal matters

Figure 16 shows that since 1998-99, the legal FTE for the ACT DPP has fallen well behind increases to the combined number of trials and appeals.

Figure 16: ACT DPP legal FTE vs appeals and Supreme Court trials (% change from base year)



Source: ACT DPP Case Management System; ACT DPP FTE data. Legal FTE includes all grades of lawyers and Executive, but excludes paralegals

As discussed in Section 2.3 and 2.4, the complexity of Supreme Court matters has increased since 2010/11 and is likely to continue to increase over the next five years. This factor, combined with the recent jump in Supreme Court trials from 2015-16 to 2016-17, indicates that the DPP does not have enough senior prosecutors to keep up with the increasing complexity of criminal trials.

3.3.2 With existing resources, it is difficult for the DPP to recruit and retain senior prosecutors

DPP staff salaries vary across jurisdictions. Junior level legal staff receive similar salaries across all jurisdictions. However, Table 2 indicates that senior prosecutors in the ACT have lower salaries than most of their colleagues in other jurisdictions, particularly NSW and Victoria.

Table 2: Legal salaries by post qualification experience role across select jurisdictions

Lawyer level	ACT Grade 1-3 equivalent (Junior prosecutor)	ACT Grade 4 equivalent (Mid - level prosecutor)	ACT Grade 5 equivalent (Senior prosecutor / Crown Prosecutor)	ACT Executive equivalent (Senior Crown Prosecutors)
ACT	\$75,000 to \$120,000	\$140,000	\$160,000	\$176,000 Asst. Director \$201,000 Dep. Director
NSW	\$70,000 to \$125,000	\$164,000	\$282,000	\$308,000 to \$340,000
Victoria	\$61,000 to \$90,000	\$113,000 to \$151,000	\$194,000 to \$242,000	\$378,000
Tasmania	\$50,000	\$102,000 to \$128,000	\$150,000	\$237,000 Dep. Director
NT	\$94,000 to \$108,000	\$125,000	\$140,000	\$240,000

Source: Salaries taken from data provided by jurisdiction's DPP offices or publicly available data where not provided. NSW data obtained from the NSW Remuneration Tribunal's July 2016 Annual Determination, recent job advertisements and interviews with NSW DPP staff. NT data obtained from NT Office of the Commissioner for Public Employment and verbal advice from NT DPP. All salaries do not include superannuation, which can vary significantly across jurisdictions, or other employee on-costs. All salaries are rounded to the nearest \$1,000.

Note: Roles vary by jurisdiction – this table compares broadly equivalent roles.

The most senior prosecutors in New South Wales, Victoria, the Northern Territory and Tasmania all receive larger remuneration than similarly experienced staff at the ACT DPP. This may be acting as a barrier for the ACT in retaining and attracting senior staff to prosecute complex criminal matters.

All other DPP offices reported having difficulty recruiting at the senior levels. This may be due to the salaries experienced lawyers can receive at the bar or in private law practice. However, most did not face a problem retaining senior staff.

Victoria reported strong recruitment at the junior levels as it attracts the best and brightest young legal minds. It sees cultural fit as important and looks to support junior lawyers becoming leaders of the organisation. Queensland does not attract many senior prosecutors and does not consider salary to be the reason why people want to work for the DPP. Similar to Victoria, its recruitment model is built on bringing in junior legal and paralegal staff and supporting them to make the transition to become Crown Prosecutors. Tasmania also reported that it generally filled its senior positions from within the organisation. None of the offices from large states reported an issue in retaining senior staff. The Northern Territory DPP reported that it also had difficulty recruiting at the senior levels due to similar salaries being paid across the jurisdictions at that level.

4 Government investment in the courts system will push the DPP beyond its capacity

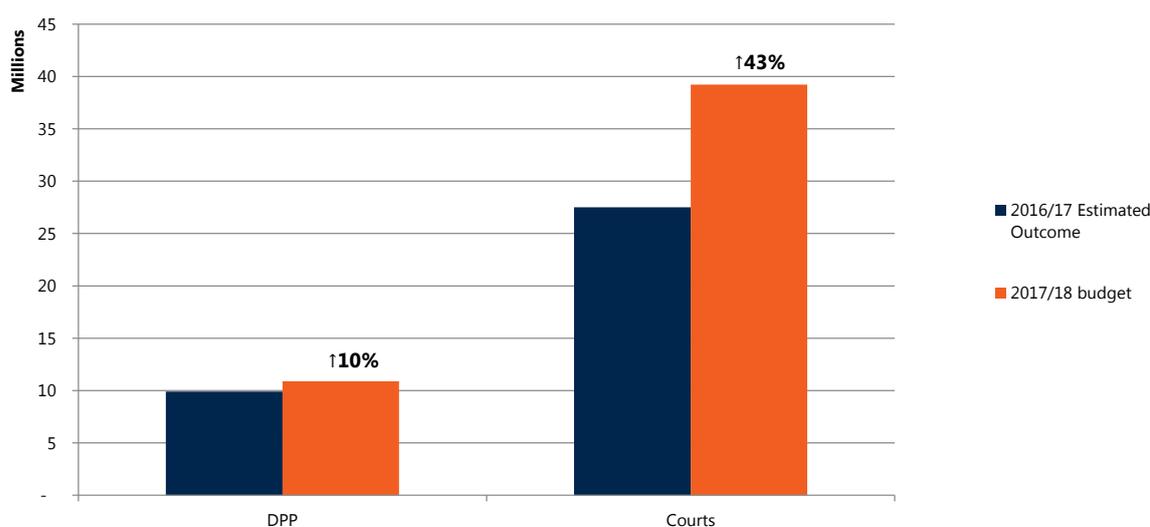
4.1 The capacity of the courts to hear more matters will overtake the DPP's capacity to prosecute them

The ACT Supreme Court is in the middle of a significant increase in capacity to hear matters. In mid-2016, the ACT Government appointed a fifth judge to the Supreme Court.³¹ Chief Justice Helen Murrell has also instigated a successful visiting judges program, which sustains a full court capacity when judges need to take vacation.³²

In early 2018, the new ACT Supreme Court facility will expand the Supreme Court's capacity to hear more matters at the same time.³³ It will also receive a significant jump in recurrent payments from the ACT Government to the tune of a 43% increase on 2016/17.³⁴

The DPP will not receive a concomitant increase in prosecutor resources. Figure 17 shows that the resources of the court will increase by more than four times the increase in DPP resources.

Figure 17: 2017/18 ACT Budget controlled recurrent payments (\$millions)



Source: ACT Budget 2017/18, Attorney General Portfolio, Controlled Recurrent Payments – 2016-17 Estimated Outcome vs 2017-18 Budget. ACT DPP figures exclude money for the retrial of David Eastman.

³¹ Simon Corbell MLA, Media Release, 'Appointment of a fifth resident judge for the ACT', *Media Releases*, 2 May 2016, available at < http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/corbell/2016/appointment-of-a-fifth-resident-judge-for-the-act>, accessed on 7 July 2017.

³² In 2014/15 the ACT Government appointed four Acting Judges and provided funding that allowed them to assist the Supreme Court to further reduce the backlog of civil cases and cover the absences of resident Judges taking leave: JACS Annual Report 2014/15 pg 91.

³³ Simon Corbell MLA, Media Release, 'New \$150 million ACT Law Courts one step closer with announcement of preferred proponent', 2 May 2016, available at < [http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/corbell/2015/new-\\$150-million-act-law-courts-one-step-closer-with-announcement-of-preferred-proponent](http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/corbell/2015/new-$150-million-act-law-courts-one-step-closer-with-announcement-of-preferred-proponent)>, accessed on 7 July 2017.

³⁴ ACT Budget 2017/18, Attorney General Portfolio, Controlled Recurrent Payments.

4.2 The capacity of courts to hear more jury trials will compound existing pressures on the DPP

The new ACT Supreme Court facility will expand the Supreme Court's capacity to hear concurrent jury trials from three to five.³⁵ This will have the effect of reducing the effective listing periods and condensing the DPP's trial workload.

The Supreme Court hears all trials within one of four listing periods each year, which are supposed to be five-weeks long. In recent years, the limited capacity of the Supreme Court has stretched this five week period out to around nine weeks. Once the new court building is completed, the DPP understands that the Supreme Court intends to stick to strict five-week listing periods.

At present, the ACT DPP has a very limited number of senior prosecutors who can run a complex jury trial:

- only the three members of the Executive have the breadth and depth of experience to run murder trials
- only the Executive and the three Grade 5 prosecutors can run trials on the more serious indictable matters including homicide, serious sexual assault, and serious grievous bodily harm offences.

From our consultations within the DPP, we understand that condensing the trial listing period to five weeks would create a real possibility of the ACT DPP being unable to appropriately resource complex trials from its existing pool of prosecutors.

This issue is not unique to the ACT. The flow on effects on DPP offices from increasing capacity in other parts of the justice system have been felt in other jurisdictions. In Victoria, the judicial officer sitting days requiring DPP prosecution services measure was at its highest ever level in 2015-16 at nearly 11,500 matters, up 20% on the previous year.

Tasmania reported that a recent change in government policy on family violence resulted in an increase in the number of police officers. This led to more court hearings and then placed significant pressure on the DPP's resources. In the Northern Territory, the move to the Darwin DPP office taking on responsibility for summary matters was in part due to a push to have more police on the streets.

³⁵ Simon Corbell MLA, Media Release, 'New \$150 million ACT Law Courts one step closer with announcement of preferred proponent', 2 May 2016, available at < [http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/corbell/2015/new-\\$150-million-act-law-courts-one-step-closer-with-announcement-of-preferred-proponent](http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/corbell/2015/new-$150-million-act-law-courts-one-step-closer-with-announcement-of-preferred-proponent)>, accessed on 7 July 2017.

5 Our recommendations to address pressures on the DPP lie across the justice system

5.1 The DPP requires an immediate increase in resources, followed by greater funding over the long term

The ACT DPP faces intense pressure from three angles:

- **Condensed demand:** Once the new Supreme Court building opens in 2018, the Supreme Court will be able to hear a significantly greater number of complex matters at the same time.
- **Greater demand overall:** Since the late-1990s, increases in the volume and complexity of indictable matters have outpaced increases in the DPP's resources. The ACT DPP is currently one of the leanest DPPs in the country, and has far less resources per indictable matter than either New South Wales or Victoria.
- **Supply constraints:** The ACT DPP needs to recruit and retain more senior prosecutors, but is much less competitive on salary than other jurisdictions, particularly New South Wales and Victoria. As a consequence, its Executive has had to take on more responsibility than it should for prosecuting serious criminal matters.

As a consequence, the DPP faces an immediate shortfall in resources, followed by challenges over the medium to long term keeping up with projected increases in the volume and complexity of indictable matters. To resolve this, the ACT government needs to provide the DPP with an immediate increase in resources, followed by moderate increases each year over the medium to long term.

The ACT DPP is likely to need the following within the next twelve months period:

- an increase in Grade 3, Grade 4 and Grade 5 prosecutors by at least 30% of current actual FTE to ensure there are enough trial advocates to prosecute a higher number of concurrent Supreme Court trials and appeals
- the establishment of at least one and preferably two new Crown Prosecutor positions with sufficient seniority to handle some of the matters currently prosecuted by the Executive
- an increase in the number of supporting staff, including paralegals, to support increased demand for subpoenas, basic legal work and administrative support.

In addition to the above, the DPP requires an immediate injection of extra funding for specialised prosecutors to meet the increase in confiscation of criminal asset referrals from the AFP's Financial Investigation team, which has more than quadrupled its membership from 2 to 9 police officers.

Additional FTE for the DPP within the next 12 months would:

- enable the Supreme Court to more effectively reduce backlog and wait times for criminal trials
- ensure that the DPP can continue to appropriately resource the growing number of appeals
- better meet community expectations in relation to the use of victim impact statements and the specialist resourcing of family violence and sexual assault matters
- create an opportunity for the DPP Executive to focus more time on the most important appeal matters, management responsibilities, law reform and improvements to criminal justice in the ACT.

However, without additional FTE the ACT DPP will lack the senior prosecutor resources to handle more Supreme Court trials in a condensed time period.

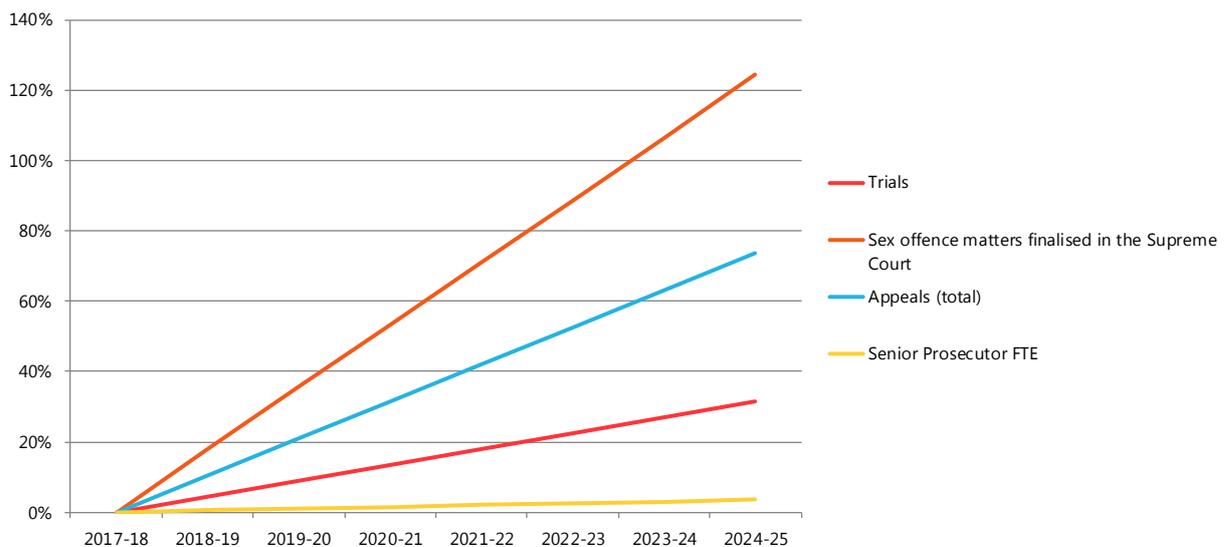
Beyond an immediate need for more resources, the DPP will require additional funding over the medium to long term. The data analysed in this report shows that demands on the DPP are rising due to:

- the increasing number of appeals and Supreme Court trials
- the increasing complexity of trial work
- the increasing proportion of Supreme Court trials which are complex, in particular the sharp increase in sex offence matters and the decline in trials for less complex violent offences
- the commitment by the ACT Government and the DPP to meet increasing community expectations in dealing with sexual assault matters and family violence matters.

Even if the Courts and DPP successfully work together to address the backlog in court cases, trends for trials, appeals, family violence, and sexual assault indicate that the DPP's workload will continue to increase over time as the ACT population grows. Figure 18 projects these pressures over the next eight year period to 2025. Even without factoring in the impending increase in Court resources, the data shows a significant increase in the demands on senior prosecutors in the ACT DPP.

Assuming the ACT population continues to grow at 6%,³⁶ in 2024/25 the DPP will face 32% more trials and 74% more appeals.³⁷ If trends over the last seven years continue,³⁸ a higher proportion of these trials will be more complex matters, with a projected rise in sex offence matters of 124%.³⁹ Over the same period, projected FTE for senior prosecutors will only rise by 3.5%.⁴⁰

Figure 18: Linear forward projections of trials, appeals, sex offence matters and FTE (does not include effects of the new ACT Supreme Court building) (% change from base year)



Source: Linear projections based on historical data provided by the ACT DPP on trials and appeals, CASES data on sex offence matters finalised in the Supreme Court, and ACT DPP FTE data.

Notes: Senior Prosecutor FTE includes Grade 5 and Grade 4 prosecutors and does not include the three members of the DPP Executive. Trends for trials and appeals are based on the period 1998-99 to 2016-17. Trends for senior prosecutor FTE are based on the period 2011/12 to 2016/17. Trends for sex offence matters are based on the period 2010-11 to 2016-17. Different time periods are used due to availability of data.

³⁶ Note that ACT population rates will continue to grow. Official population projections indicate that the ACT population will grow by 6% between 2016 and 2020: ACT Government, Media Release, 'ACT's population to reach over 421,000 by 2020', 13 March 2017, available at < http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/barr/2017/acts-population-to-reach-over-421,000-by-2020 > accessed on 26 July 2017.

³⁷ See Figure 18: Linear forward projections of trials, appeals, sex offence matters and FTE.

³⁸ Note: a smaller time period of seven years is used because of limited availability of data prior to 2010/11.

³⁹ See Figure 18: Linear forward projections of trials, appeals, sex offence matters and FTE.

⁴⁰ See Figure 18: Linear forward projections of trials, appeals, sex offence matters and FTE.

5.2 The justice system can be future-proofed by resourcing it as a unified whole

The justice system working together as one cohesive unit has underpinned successful approaches to addressing workload pressures in other jurisdictions. Victoria has in recent times developed close working relationships with the Victoria Police and Court Services Victoria to address the pipeline of incoming matters.

The Victorian DPP set up working groups aimed at understanding how the DPP could better help the police and the courts in delivering their services to the community. The relationship is now one of collaboration and constant communication. These relationships were also integral to the DPP receiving additional funding through the Victorian budget. Similarly, the Queensland DPP is part of a whole-of-justice system reform effort being led by the Queensland Department of Justice and Attorney-General and Queensland Treasury.

Sections 2.4.2 and 4.1 of this report indicate that issues exist in relation to misaligned resourcing across the justice system. In 2017/18, court resourcing will increase by 43% and the number of AFP officers making COCA referrals will increase from two to nine. Neither of these changes will be accompanied by a commensurate increase in prosecutor resources. As a consequence, bottlenecks and delays will be inevitable unless the DPP receives a funding boost to increase senior prosecutor FTE.

5.3 Greater independence and governance by the DPP will allow it to operate more effectively

5.3.1 Direct appropriation would safeguard the DPP's independence, drive efficient use of shared services, and free up funds

The 2011 Hawke Review recommended that the DPP and three other statutory office holders receive appropriation funding in their own right. Dr Hawke said:

"While the level of resourcing for those officers is properly a matter for the Government to determine in setting the Budget, it is appropriate that funding for independent office holders be appropriated directly to their offices."⁴¹

Dr Hawke's recommendation has been implemented by the ACT Government for other statutory office holders (the Auditor General and the Electoral Commissioner) but not for the Director of Public Prosecutions.⁴²

Central to Dr Hawke's recommendation was the need for statutory office holders to operate independently of political influence. At pg. 104, Dr Hawke said that:

"Concerns about statutory independence of decision makers and office holders go, ultimately, to public confidence that the holder of that office is able to exercise their functions free from political interference, or other outside pressure."

At present, the DPP receives its budget indirectly through the Justice and Community Safety Directorate (JACS). JACS passes on the appropriated budget for the DPP, minus an amount determined by JACS to cover corporate overheads including payments to the ACT Office of Shared Services (OSS).

According to JACS' figures, the total overhead allocation for 2017/18 for the DPP is approximately \$0.943m. A substantial proportion of this overhead (\$0.363m) accounts for an allocation of 'Other centrally held fund and corporate expenditure' – which covers costs associated with executive and corporate

⁴¹ Dr Allan Hawke, *ACT Public Service Review Final Report – Governing the City State*, 2 February 2011, pg 103.

⁴² ACT DPP, Annual Report 2014/15, Director's Overview, pg 8.

governance and oversight (amongst other things). However, the DPP also sight other financials that may be of substance and propose an alternative view of the appropriate figures. Given the complexity of corporate overhead allocations, a more detailed financial study is needed to accurately quantify the extent to which direct appropriation would free up funds to be used on additional prosecutors.

Interviews with the DPP Executive and Corporate team indicate that, under a direct appropriation model, the DPP would be able to free up a significant proportion of the funds currently allocated to overheads. For example, the DPP is of the position that it does not require any assistance in relation to executive and corporate oversight, or strategic finance functions such as preparing business cases and budget proposals.

Under a direct appropriation model, there would be much greater transparency around the DPP's capacity to meet its budget. Currently, if the DPP cannot meet its budget and fulfil its statutory functions JACS may absorb some budget overspends into its wider directorate budget.

Given the compelling need for independence and the potential to realise some efficiencies, the ACT Government should consider a direct appropriation model for the DPP.

5.3.2 Enabling the DPP to appoint Crown Prosecutors would address the lack of very senior prosecutors and improve management capability

DPPs in other Australian jurisdictions have the ability to appoint 'Crown Prosecutors' to handle the most serious criminal matters. These prosecutors are typically retained on individual contracts and receive remuneration well above the standard public service pay bands. However, all staff in the ACT DPP other than the Director are currently employed under the *Public Sector Management Act 1994*, which sets the remuneration arrangements for all staff. To provide more flexibility and be competitive in the legal market, the DPP needs the ability to appoint Crowns and Executives outside of the current constraints. This would enable the DPP to negotiate individual contracts which will attract suitably qualified and skilled individuals to Crown Prosecutor and executive roles.

The ACT DPP would benefit greatly from new governance arrangements giving it the flexibility to appoint Crown Prosecutors. As explained in Section 3.3.2, the ACT DPP is much less competitive on pay than New South Wales, Victoria, and Tasmania in relation to the most senior prosecutors. If the ACT DPP had the resources and authority to appoint Crown Prosecutors, it could better address some of the issues set out in sections 2, 3, and 4 of this report.

A new category for the most senior prosecutors would also free up the Executive to focus more on strengthening governance arrangements and contributing to law reform and improvements to criminal justice in the ACT. This would, in turn, drive greater efficiency and effectiveness over the long term through a greater focus on management and technological innovation.

5.4 Greater flexibility in who can appear in court would enable the DPP to use resources more efficiently

Currently, only qualified lawyers can appear in legal proceedings in the ACT, including listing procedures. However, listings exist for the sole purpose of providing programming orders and do not affect the substantive rights of parties. While some basic advocacy skills are required, the primary focus of a listing hearing is to determine the parties' availability and set dates for the matter to progress.

In Queensland, the Supreme Court has allowed 'sufficiently informed' articulated clerks to appear in court for some applications and reviews since 1999.⁴³ In practice, this has allowed clerks in the Queensland DPP to appear during listings instead of qualified prosecutors.

⁴³ Supreme Court of Queensland, Practice Direction No 24 of 1999, 9 August 1999. See also Supreme Court of Queensland, Practice Direction No 7 of 2001, 11 September 2001.

Simple legislative amendments could allow non-lawyers with some legal training to appear before the Magistrate's Court for some non-contentious applications. This would free up time for junior prosecutors to assist with more serious matters. It would also provide useful experience for senior paralegals.

5.5 The justice system would operate more efficiently if it used unified IT systems and business processes

Over the last five years, the ACT DPP has worked to position itself within a whole of government move towards electronic service delivery. This has resulted in some tangible improvements. For example, the DPP has worked closely with the Australian Federal Police to ensure that complex murder briefs are received, analysed, served, and presented to the Court in electronic form.

There is a significant flow of documentation between ACT Policing, the DPP, and the courts system.

When the police charge an accused, they prepare a file and send it to the DPP. These files are critical for the DPP to commence prosecution through the listing process.

- Many of these files are in hard copy form, requiring paralegals at the DPP to scan the documents into the DPP's system.
- When a plea is entered after the listing process, the DPP sends the file back to the AFP, which prepares a brief with evidence and sends it to the DPP. The DPP then analyses and serves a hard copy of the brief to the defendant. Documents tendered in court proceedings are filed in hard copy.

Some progress has been made to ensure complex murder briefs are created by the AFP in electronic form and then received electronically by the DPP and eventually the courts. However, seamless digitisation is yet to be realised for all matters.

The lack of a unified electronic system between the AFP, DPP and the courts system creates inefficiency:

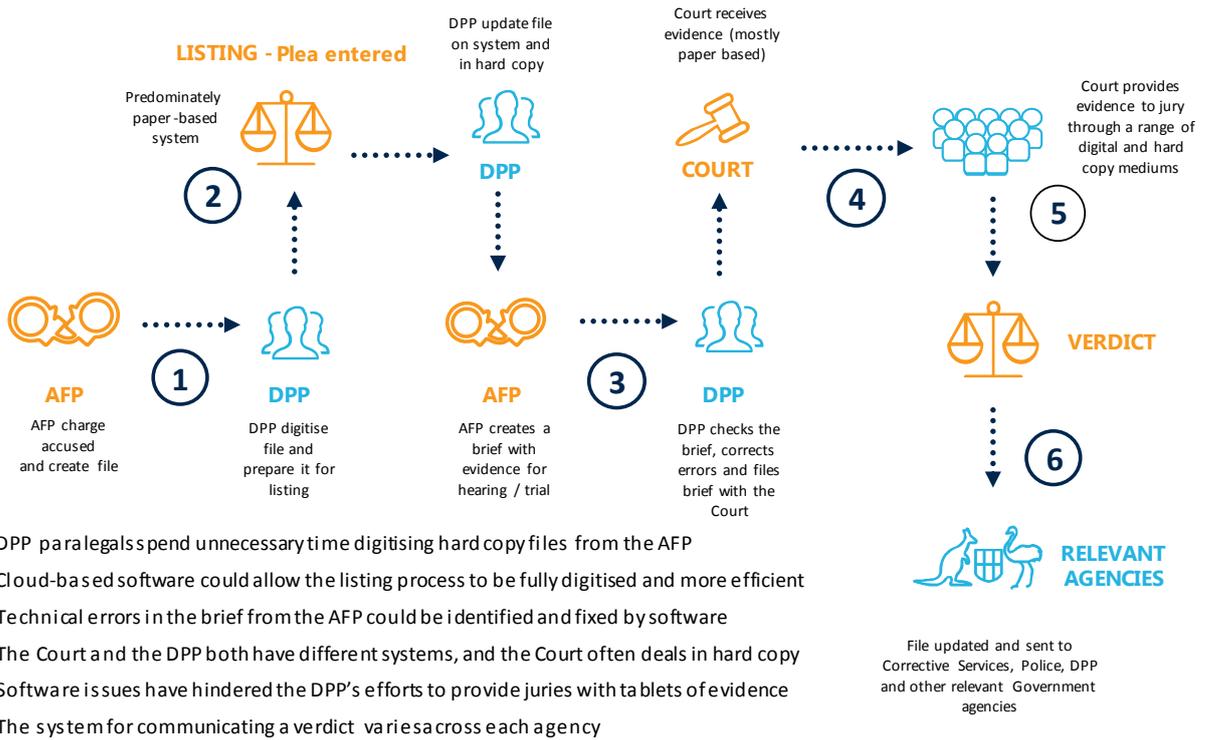
- it requires paralegals to spend unnecessary time digitising hard copy files when the DPP receives them from the AFP
- it creates greater room for error in preparing briefs. Even for summary matters, paralegals in the DPP often have to spend up to an hour checking these briefs for errors and following up any errors with the AFP
- it creates unnecessary work for paralegals, prosecutors and court staff to photocopy, store and organise hard copy documents.

The lack of a unified electronic system also stymies opportunities to benefit from new technologies. Some of these opportunities include

- applications which assist prosecutors to access and interpret evidence more quickly
- platforms for providing jurors with the ability to access evidence on-demand.

Figure 19 and Figure 20 demonstrate how unified IT systems and business processes could realise efficiencies and create opportunities for innovations. Information, mostly in the form of briefs containing evidence, passes backwards and forwards between the AFP, DPP, and Courts.

Figure 19: Current process for transferring information between justice agencies



1. DPP para legals spend unnecessary time digitising hard copy files from the AFP
2. Cloud-based software could allow the listing process to be fully digitised and more efficient
3. Technical errors in the brief from the AFP could be identified and fixed by software
4. The Court and the DPP both have different systems, and the Court often deals in hard copy
5. Software issues have hindered the DPP's efforts to provide juries with tablets of evidence
6. The system for communicating a verdict varies across each agency

Figure 20: Potential process under a unified IT system

